

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

1550-60 FAIRVIEW CORPORATION,
a Michigan Corporation,

Plaintiff,

vs.

Case No. 05-73312
HON. GEORGE CARAM STEEH

GENESIS PROPERTIES, L.L.C., et al.,

Defendants.

_____ /

ORDER DENYING DEFENDANTS' MOTION TO DISMISS, DENYING PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT, AND SETTING HEARING ON PLAINTIFF'S
MOTION FOR APPOINTMENT OF A RECEIVER

Before the court are plaintiff's motion for default judgment and defendants' motion to dismiss for lack of subject matter jurisdiction, which was filed following the court's January 3, 2006 evidentiary hearing on plaintiff's pending motion for default judgment.

Defendants assert in their motion that this case lacks the required amount in controversy of \$75,000 for a diversity case to be heard in federal court. Defendants cite to plaintiff's first-filed complaint, which requested that the land contracts entered into between the parties be cancelled, and that plaintiff retain all payments made on the land contracts as stipulated damages for breach of the land contract. Because that amount was less than \$75,000, defendants assert that jurisdiction over this case is lacking in federal court.

Plaintiff, meanwhile, filed an Amended Complaint on January 17, 2006, alleging three causes of action.¹ Those are Count I-Breach of Contract; Count II-Foreclosure; and Count III-Appointment of Receiver. The court notes that the filing of an amended complaint by plaintiff was specifically contemplated by the court at the hearing held January 3, 2006. In the Foreclosure count, plaintiff requests a judgment of foreclosure, sale of the premises as set forth in Mich. Comp. Laws Ann. § 600.3101 et seq., and application of the proceeds to the “discharge of the debt owed by defendant as required by law.” The Breach of Contract count asserts nonpayment of principal and interest and failure to perform maintenance and repairs provided for in the land contract, and requests \$905,000 in damages.

In accordance with the amended pleadings in plaintiff’s complaint, defendants’ motion to dismiss for lack of subject matter jurisdiction is hereby DENIED. Likewise, plaintiff’s motion for default judgment is hereby DENIED. Defendants are ordered to file an answer to plaintiff’s amended complaint within 21 days of this order. Finally, the court hereby sets a hearing on plaintiff’s motion to appoint a receiver, to be held February 21, 2006 at 2:30 p.m.

IT IS SO ORDERED.

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: February 8, 2006

¹ The Amended Complaint is construed, in part, as a pleading responsive to defendants’ motion to dismiss.

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on February 8, 2006, by electronic and/or ordinary mail.

S/Josephine Chaffee
Secretary/Deputy Clerk